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November 5, 1992

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: CC Docket No. 92-115

Dear Ms. Searcy:

Transmitted herewith for filing with the Commission, on behalf of Bell Atlantic Mobile Systems, Inc. and the Bell Atlantic Metro Mobile Companies, are an original and four copies of their "Reply Comments" in the above-referenced rulemaking proceeding.

Should there be any questions regarding this matter, please communicate with this office.

Very truly yours,

John T. Scott, III

John T. Scott, III

Enclosures

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List A B C D E

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Revision of Part 22 of the Commission's Rules Governing The Public Mobile Services	)	CC Docket No. 92-115

REPLY COMMENTS OF BELL ATLANTIC MOBILE SYSTEMS, INC. AND THE BELL ATLANTIC METRO MOBILE COMPANIES

Bell Atlantic Mobile Systems, Inc. and the Bell Atlantic Metro Mobile Companies ("BAMS")[1/], by their attorneys and pursuant to Section 1.415 of the Commission's Rules, hereby submit their reply comments on the Commission's proposed revision of Part 22 of the Rules. On October 5, 1992, The Bell Atlantic Companies, including BAMS, filed comments addressing numerous proposed Part 22 rules. BAMS submits this reply to address three issues raised by initial comments by other parties.

Section 22.129 - Agreements to Dismiss Applications, Amendments, or Petitions to Deny

Proposed Section 22.129 would limit payments to parties which had filed competing applications or petitions to deny but later agreed to dismiss their filings. Payments could not exceed the

1/ Bell Atlantic Mobile Systems, Inc. and the Bell Atlantic Metro Mobile Companies, either directly or through subsidiaries or partnerships, hold cellular radio authorizations to operate cellular systems in the Northeast, Mid-Atlantic, Southeast and Southwest regions of the United States.

withdrawing party's "legitimate and prudent expenses." Applicants Against Lottery Abuses ("AALA") opposes this rule.

BAMS strongly supports the Commission's proposed limit on settlement payments. It is consistent with the rules which the Commission has adopted in other services to curb speculative applications and petitions to deny. See Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, 66 RR2d 708 (1989), on reconsideration, 67 RR2d 1515; Rules to Prevent Abuses of the Comparative Hearing Process, 68 RR2d 960 (1990), on reconsideration, 69 RR2d 175 (1991). The Commission's findings in those rulemakings that such payoff limits were both appropriate and necessary to prevent abuses of its application processes also apply to the Public Mobile Services, and warrant adding parallel provisions with respect to Part 22 proceedings.

Although AALA opposes new Section 22.129 in its entirety, its comments focus on the perceived impact of the rule on petitions to deny. AALA does not demonstrate why limits on payoffs to competing applicants are unjustified. Given other comments supporting the limit on payments to withdrawing applicants, and the lack of any opposing comments opposing this limit in particular, Section 22.129's proposed limits on such payments is warranted and should be adopted.

The sole issue AALA raises is whether the reach of Section 22.129 should extend to petitioners to deny because of the alleged benefits legitimate petitioners pose as "private attorneys general." (AALA Comments at 6.) AALA contends that the proposed

limits might discourage persons from "policing" the application process to challenge improper applications. The short answer, of course, is that Section 22.129, once adopted as proposed, would curtail the need for such private enforcement by discouraging the type of speculative applicants that AALA discusses.

In any event, the Commission addressed and rejected AALA's argument when it approved limits on payments to petitioners against applicants in the broadcast service. The Commission found that, while there was some benefit in private enforcement through such petitions, the lack of limits also encouraged frivolous and speculative petitions that delayed the provision of service and expended the Commission's scarce resources. It thus decided to strike a balance by allowing payments to petitioners but restricting them to legitimate and prudent expenses:

> We believe that a legitimate and prudent expense limitation on settlement payments of petitions to deny strikes the appropriate balance between deterring abuses and not discouraging the filing of such petitions. . . . By permitting recovery of legitimate and prudent expenses, we are preserving the petition to deny process as a monitoring and regulatory tool. . . . To preserve the private attorney general function of petitions to deny, we believe we should provide for the possibility that a petitioner can be made economically whole.

66 RR 2d at 718.

The Commission's policies on limiting settlement payments in the broadcast service was the product of several years of rule-makings and detailed decisions which carefully balanced the need to protect legitimate petitioners while discouraging speculative filers. There is no reason for the Commission to choose a differ-

ent approach for Part 22 proceedings. Section 22.129 should be adopted as proposed.

Microcells

Southwestern Bell Corporation has asked the Commission to make several changes in the proposed Part 22 Rules to reflect the increasing use of microcells in the cellular radio service. BAMS agrees that the Part 22 rules need to incorporate appropriate references to microcell technology, and thus supports Southwestern Bell's comments, with the following caveats:

First, Southwestern Bell requests that a definition of "microcell" be added to new Section 22.99. The definition limits microcells to transmitters "at a power setting of 1 watt or less." Because, however, a power setting does not always reflect the actual radiated power of a transmitter, this definition could exclude many transmitters from qualifying as microcells under the proposed definition. Accordingly, the limit set forth in the definition should instead be an effective radiated power of 1 watt or less.

Second, Southwestern Bell suggests that new Section 22.323 be modified to state that carriers may "provide other communications services, including microcells, incidental to the primary Public Mobile Service for which the authorizations were issued." Adding the underlined language, however, may suggest that microcells are merely an "incidental" service. To the contrary, microcells should be viewed as an integral part of the provision of cellular

service, and carriers should be free to rely on this new technology without having it treated as merely "incidental". BAMS thus suggests that Section 22.323 be adopted as proposed.

Revisions to FCC Form 401

The Commission should add a box on Form 401 to identify whether the application proposes a contour extension of any kind into an adjacent market. Applications for expanded cellular service must describe the location and extent of any extensions of a system's contours into adjacent markets and justify the extension. In announcing acceptance of cellular applications, the Commission formerly identified which applications proposed such extensions by including a "DX" code in the Public Notice. The Commission has discontinued the "DX" coding because, BAMS understands, of the staff time involved in reviewing the application to search for any proposed contour extensions. This information was extremely helpful to carriers in adjacent markets. Without it, a carrier must obtain and review all applications of carriers in adjacent markets to determine if any extensions into its market are involved.

BAMS thus recommends that the Commission include on the application form a box which the applicant could check if the application involves a contour extension into an adjacent market. This would enable the staff to identify immediately those applications and include the "DX" coding on the Public Notice without any incremental staff time. This change would impose no

additional burden on Commission staff while greatly aiding cellular licensees.

Conclusion

BAMS accordingly asks that the proposed Part 22 rules be modified as set forth in the Comments of the Bell Atlantic Companies and in these Reply Comments.

Respectfully submitted,

BELL ATLANTIC MOBILE SYSTEMS, INC.
AND THE BELL ATLANTIC METRO MOBILE
COMPANIES

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